IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2316 OF 2006

M/s.Swan Distilleries Pvt. Ltd. ...Petitioners

V/s.

State of Maharashtra through
the Inspector Flying Squad, State
Excise Department, Sindhudurg at Oros. ...Respondent

Mr.Vishal Thadhani for Petitioners.
Mr.Y.M. Nakhawa APP for the State/Respondent.

CORAM : V.M. KANADE, J.

DATED :12th SEPTEMBER, 2007.

P.C:-

1. Heard learned counsel for the Petitioners and learned APP for the State.

2. The Petitioners are challenging the order passed in Criminal Revision Application No.51/06 whereby the Sessions Court was pleased to dismiss the application which was filed by the Petitioners herein for return of the property which was seized by the Respondent.

3. Brief facts which are relevant for the purpose of deciding this Petition are as under:-

The Excise Department seized a Tanker on 5/3/2006 at the Check Post, Insuli, Sawantwadi. Prosecution case is that the Tanker was containing Rectified Spirit to the tune of 20,000 liters and the Tanker was bearing registration No.MH-18/M-2762. It is case of the prosecution that the genuine documents were not produced by the Driver of the Tanker and it was case of illegal transportation of Rectified Spirit under the garb of Zealite Chemical.

4. The Petitioners, on the other hand, alleged that the Driver had produced original copies of the export order which was issued by the Assistant Commissioner of Excise who had issued export permit for the purpose of exporting Rectified Spirit to Arunachal Pradesh. It is submitted that no panchanama was made in respect of said original documents which were submitted by the Petitioners. They have, therefore, annexed xerox copies of these documents to this petition and they have also annexed certificate dated 5/6/2006 which was issued by the Assistant Commissioner of Excise wherein it was stated that Export Permit bearing No.1409 and 1410 dated 31/1/2006 were issued by this Office in favour of M/s. Swan Distilleries Pvt. Ltd to export 12,000 B.L. each of Extra Neutral Alcohol to M/s. Eastern

Distilleries Ltd., Itanagar Papumpara Dist. Arunachal Pradesh. It is however, certified in the said certificate that both the export permits were genuine and were issued by the office. Two xerox copies which are annexed at Ex.A also reveal the vehicle No.MH-18/M-2762 in which Rectified Spirit was being exported. It is case of the Petitioners that, therefore, said Tanker was illegally detained by the Respondent herein.

5. An Affidavit in reply has been filed to this petition in which it is alleged that this particular vehicle was accosted by the Excise Department and that when the Driver of the Tanker was interrogated, he informed that the material which was being transported was Zealite Chemical and that the documents which were submitted by him were fabricated. It is further submitted that said Tanker was not passing from Goa to Maharashtra but the vehicle was plying all along from Bhilai, Dist:Chhatisgarh and entered through Madhya Pradesh and was about to pass the State of Maharashtra when it was accosted at Insuli Check Post. Affidavit-in-reply is, however, silent in respect of certificate which is annexed to the Petition at Ex.L.

6. In my view, considering peculiar facts and circumstances of the case, the Respondents ought to have inquired with the Assistant

Commissioner of Excise regarding certificate which has been issued by the said office and which is annexed to the this petition. However, affidavit-in-reply is silent on this point. Further, it is an admitted position that Rectified Spirit is perishable and if it remains in dockyard of the Excise Department, said material will not fetch any price being worthless. Sessions Court, in my view, has not considered this aspect. The Petitioner can be put to terms and certain conditions may be imposed while permitting return of the Rectified Spirit. Order passed for the return of the property would not change nature of allegations which are made in the complaint and the Trial Court will have to decide the criminal case on merits and in accordance with law.

7. Hence, in my view, therefore, order passed by the Sessions Court, will have to be set aside. The Respondent is directed to return Rectified Spirit which is seized by them forthwith. The Petitioners shall give indemnity to the Trial Court, in the event of adverse orders being passed in respect of said Rectified Spirit. The Petitioners shall pay market value of the goods as on the date of release of the said property to them. Respondent shall ascertain the market value of the goods before releasing the same. The Petitioners shall also find out market value of the goods and give indemnity

towards the said amount. The Petitioners also shall give undertaking that the Rectified Spirit shall not be sold by them in the State of Maharashtra and shall not be used in the State of Maharashtra for the purpose of manufacture of foreign alcohol and country made liquor. This undertaking shall be given by the Petitioners to the Trial Court. Upon said undertaking and indemnity bond being given by the Petitioners, property may be released forthwith. Independent agency to give certificate in respect of market value of the said goods.

8. It is clarified that the Trial Court shall not be influenced by any observations made by this court while deciding this writ petition and may decide the criminal case in accordance with law.

V.M. KANADE, J.